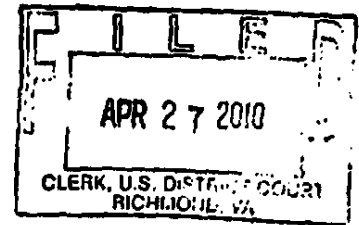


IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Virginia



APEX DIGITAL, INC.,

Appellant,

v.

Civil Action No. 3:10cv200

CIRCUIT CITY STORES, INC.,
et al.,

Appellees.

ORDER

Having reviewed and considered MOTION OF APEX DIGITAL, INC. FOR LEAVE TO APPEAL (Docket No. 1), and finding that:

- (1) the appeal involves a controlling question of law, that question being the applicability of 11 U.S.C. § 502(d) to administrative expense claims made pursuant to § 503(b)(9), that is essential to a determination of whether the appellant can recover on its § 503(b)(9) claims;
- (2) the question presents substantial ground for a difference of opinion, that difference of opinion being explicitly identified in the Bankruptcy Court's Memorandum Opinion of January 6, 2010, discussing two distinct lines of authority on the

question that come to irreconcilably different conclusions; and

- (3) immediate appeal would materially advance the termination of the litigation, because it would allow the court to quickly, efficiently, and equitably determine the rights and remedies of the parties to the underlying bankruptcy petition;

it is hereby ORDERED that the Appellant's motion for leave is granted. The issues are adequately presented in the briefs and oral argument would not materially aid the decisional process.

It is further ORDERED that, for the reasons set forth on the record during the conference call of April 22, 2010, the parties shall file briefs on the merits of the appeal as follows: the Appellant shall file its opening brief no later than May 6, 2010; the Appellees shall file their consolidated response brief by May 20, 2010; and the Appellant shall file its reply by June 3, 2010.

It is further ORDERED that a status conference, conducted via conference call to be arranged by Appellee

Circuit City, shall be held on April 29, 2010, at 11:00

A.M.

It is so ORDERED.

 /s/ REP
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Date: April 23, 2010

CERTIFICATE OF NOTICE

District/off: 0422-7
Case: 08-35653

User: frenchs
Form ID: pdforder

Page 1 of 1
Total Noticed: 1

Date Rcvd: May 04, 2010

The following entities were noticed by first class mail on May 06, 2010.
aty +Gregg M. Galardi, Skadden Arps Slate Meagher, & Flom LLP, One Rodney Sq., PO Box 636,
Wilmington, DE 19899-0636

The following entities were noticed by electronic transmission.
NONE.

TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: May 06, 2010

Signature:

